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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,123	09/30/2003	Brent Dalmas Nelson	EDSC106US0	4963

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EXAMINER

HILLERY, NATHAN

ART UNIT PAPER NUMBER

2176

DATE MAILED: 10/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/675,123

Applicant(s)

NELSON, BRENT DALMAS

Examiner

Nathan Hillery

Art Unit

2176

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-19.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


Heather R. Herndon
Supervisory Patent Examiner
Technology Center 2100

Continuation of 11. does NOT place the application in condition for allowance because: first, the Office apologizes for the typo in the rejection of the claims under 35 USC 112, first paragraph. The term at question is clearly "symbol type mark-up language spreadsheet", which is still deemed to not be enabled by the specification. Thus, the rejection of the claims under 35 USC 112, first paragraph still stands.

As for the rejection of the claims under 35 USC 112, second paragraph, applicant argues that the skilled artisan would have derived the meaning for the term "symbol type mark-up language spreadsheet" recited in the claims presumably through knowledge known in the art at the time of the invention to be a mark-up language spreadsheet containing metamodel symbol types (p 10, third full paragraph). Applicant also asserts that the terms symbol file, symbol XML file, Symbol XML spreadsheet, symbol XML sheet, and symbol type spreadsheet all describe the same element - symbol type mark-up language spreadsheet - and the skilled artisan would recognize that the generic term, symbol type mark-up language spreadsheet, functions to particularly point out and distinctly claim "symbol type mark-up language spreadsheet", which is a mark-up language spreadsheet containing metamodel symbol types (p 10, fourth full paragraph).

The Office disagrees.

It appears that Applicant is attempting to be his own lexicographer by using the term "symbol type mark-up language spreadhseet" but does not provide a clear and deliberate definition. The Office asserts that there is no ordinary and customary meaning attributed to this term because the term is not known or used within the art. This assertion is further evidenced by applicant's response to the Request for Information under 37 CFR 1.105. The applicant did not know or could not reasonably obtain any information for this generic term either. However, applicant continues to assert that it would have been obvious to one of ordinary skill in the art at the time of the invention to derive a definition for this term, especially since applicant provides a snippet of code of what an exemplary oSymbolClip spreadsheet might comprise.

Consequently, the Office must maintain that the specification does not provide adequate support for the term "symbol type mark-up language spreadsheet", since the Office can not discern what it is and thus is also unable to suggest claim language at this time. However, it should be noted that the symbol type mark-up language spreadsheet has been interpreted to mean an oSymbolClip spreadsheet.